IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 965 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILAL DALICHAND PATEL
Versus
UMIYA FERTILIZERS

Appearance :
MR CHINMAY GANDHI for the applicant
MR DHARMESH V SHAH for Opponent No.2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/03/2006

ORAL JUDGMENT

By filing this Revision, the petitioners, who are the original plaintiffs of Civil Suit No. 451 of 1998 have prayed for setting aside order dated 8.4.1999 passed by the learned Chamber Judge, City Civil Court, Ahmedabad below Summons for Judgment by which the trial Court has granted unconditional leave to the defendant to defend the suit.

The plaintiff has filed the aforesaid suit to recover Rs.85,961-74 on the ground that the plaintiffs have sold the goods to the defendants on credit. The said suit is filed as a summary suit. In the said suit, the defendant submitted an application to grant leave to defend the suit unconditionally. The case of the defendant is that the defendant has spent Rs.1,15,000/- for publishing advertisement in various newspapers for which some debit notes are also produced by the defendant. The learned trial Judge came to the conclusion that there is a triable defence raised by the defendant as the said dispute is also taken in reply to the suit notice. The court found that since there is a triable issue, the defendant was granted leave to defend the suit unconditionally. The trial Court directed the defendant to file written statement within four weeks.

This Court while admitting the revision has not granted any interim relief. Considering the said fact, perhaps the suit might have proceeded on merits.

Apart from the said fact, powers of this Court in Revision under section 115 of Civil Procedure Code are very limited. The trial Court has primafacie found that the defendant has got an arguable case. It cannot be said that the order of the trial Court suffers from any error of jurisdiction which requires interference by this Court. So far as the powers of this Court under section 115 CPC is concerned, the same is very limited and since there is no error of jurisdiction, this Court cannot interfere with such order. Moreover, in view of the judgment of the Honourable Supreme Court in Hindustan Aeronautics vs. Ajit Prasad, AIR 1973 SC 76, unless there is an error of jurisdiction, this Court cannot interfere with the order of the subordinate Court and even if there is an error of law, the same cannot be also corrected in revisional jurisdiction.

In the above view of the matter, I do not find any merit in the Revision Application. The Revision is therefore dismissed. Rule is discharged. No order as to costs. However, considering the fact that the suit is pending since 1998, the trial Court is directed to dispose of the suit as expeditiously as possible, and in any event within one year from the date of receipt of the writ of this order.

Registry to send the writ of this order forthwith.

[P. B. MAJMUDAR, J.]

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